



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

February 6, 2015
PR 15-04

Anthony J. Bucci, Jr., Esq.

RE: CVDDI, LLC v. Town of Smithfield

Dear Attorney Bucci:

The investigation into your Access to Public Records Act ("APRA") complaint filed against the Town of Smithfield ("Town") on behalf of your client, CVDDI, LLC is complete. By correspondence dated October 23, 2014, you alleged that the Town violated the APRA when it failed to provide a sufficient explanation for extending the time to respond to your APRA request, as required by R.I. Gen. Laws § 38-2-3(e). You claim, in pertinent part:

"Despite the nominal request made, the Town Solicitor, Edmund Alves responded to my request by letter dated October 20, 2014 stating that 'due to the scope and breadth of [the] request, the Town is invoking its right under RIGL §38-2-7(b) to respond to [the] request within thirty (30) business days of receipt.'"

In response to your complaint, Edmund L. Alves, Jr., Esquire, submitted a substantive response, a copy of a separate APRA request filed with the Town on the same day as your APRA request, a copy of the Town's letter extending the time to respond to the other APRA request, copies of the documents provide in response to your APRA request, and an affidavit by the Town's IT Director who conducted the search for documents. In pertinent part, the Town argues:

"The APRA request in issue was received by Smithfield Building Official Peter Scorpio on October 16, 2014. The APRA request was included in a letter of Attorney Anthony J. Bucci, Jr., and sought the following records:

'All documents, including, but not limited to, records, letters, notices, emails, notes, minutes, and/or voice recordings and the like (collectively, 'documents') in any way relating to the property located at 320 Stillwater Rd., Smithfield, RI. For the purposes of

this request the term ‘documents’ shall include all ‘public records’ as defined in R.I.G.L. § 38-2-2. Further, this request should be deemed to include any public records that may be stored off premises or in the possession of third parties, including the Town’s attorneys.’

Also on October 16, 2014, the Town received an APRA request... That request sought the following documents which were in the possession and control of Building Official Scorio:

‘Any and all permits, approvals, licenses and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project; the project being the Bryant College Bello Center.’

Faced with the obligation of responding to these two voluminous APRA requests, the Town Solicitor sent a letter to Attorney Bucci on October 20, 2014 and to Attorney O’Connell on October 21, 2014 notifying each of them that due to ‘the scope and breath [sic] of your request, the Town is hereby invoking its right under R.I.G.L. § 38-2-7(b) to respond to your request within thirty (30) business days of receipt.’

...In addition to searching files both on and off site, the Town had to conduct a complete search of Town e-mails as well. Smithfield’s IT Director was compelled to search the Town Hall computer network, including individual employee computers, for documents responsive to the request. He expended approximately 13 hours searching for, compiling, sorting, and printing out the requested records.”

You provided no rebuttal.

At the outset, we note that in examining whether a violation of the APRA has occurred, we are mindful that our mandate is not to substitute this Department’s independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Town violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

The APRA states that, unless exempt, all records maintained by any public body shall be public and every person shall have the right to inspect and/or to copy such records. See R.I. Gen. Laws § 38-2-3(a). To effectuate this mandate, the APRA provides procedural requirements governing the time and means by which a request for records is to be processed. Upon receipt of a records request, a public body is obligated to respond in some capacity within ten (10) business days, either by producing responsive documents, denying the request with a reason(s), or, for “good

cause,” extending the time period necessary to comply. See R.I. Gen. Laws § 38-2-7. The public body may extend the time to respond by an additional twenty (20) business days if it can “demonstrate that the voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records is such that additional time is necessary to avoid imposing an undue burden on the public body.” See R.I. Gen. Laws § 38-2-3(e). “Any such explanation must be particularized to the specific request made.” Id.

It is undisputed that you submitted an APRA request on October 16, 2014 and that on October 20, 2014, within the mandated ten (10) business days, the Town responded to that request by extending the time to respond by an additional twenty (20) business days. The Town’s October 20, 2014 letter cited the “scope and breadth of your request” as the basis for the extension.¹ In dispute, however, is whether the Town had “good cause” to extend the time period to respond. Specifically, you argue that the Town violated R.I. Gen. Laws § 38-2-3(e) by “not demonstrating that ‘the voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records, is such that additional time is necessary to avoid imposing an undue burden’ on the Town.” You further contend that the Town extended the time period “in an attempt to prolong the production of said documents until after the election day of November 4, 2014” and that the Town’s October 20, 2014 extension was not “particularized to the specific request made.” Id. After reviewing all the evidence presented, we find that the Town did not violate the APRA. Our reasoning follows.

Your request sought any documents maintained by the Town “in any way relating to the property located at 320 Stillwater Rd.” and contained no time frame limiting the search. Indeed, the evidence shows that the day after receiving your request, Mr. Alves contacted the Town Manager, the Town Building Inspector, and the Town Clerk notifying them of the “extensive request,” and asked for “copies of all documents that are in the possession of the Town that are responsive to [the] request.” The Town submits that it exhausted nearly thirteen (13) hours “searching for, compiling, sorting, and printing out the requested records.” Additionally, according to the affidavit submitted by Mr. Pilkington, the Smithfield IT Director who conducted the search, he “searched everywhere on the network and individual employee computers that reasonably could be expected to contain such records including e-mails, shared network document files, personal documents files, etc.” Mr. Pilkington further attested that he “discovered hundreds, and perhaps thousands, of records in which the address 320 Stillwater Road appears as part of a mailing list, such as voter lists, trash pick-up lists, mailing labels, GIS address listings, public official listings, etc.,” that were reviewed yet deemed “beyond the scope of the request and [] were not copied.” In this respect, while you suggest that your APRA request was “minimal,” we respectfully disagree and conclude that your request for any records maintained by the Town that “in any way relat[e] to the property located at 320 Stillwater Rd.” for an unlimited scope of time, was indeed broad.

¹Also on October 16, 2014, the Town received a separate “voluminous” APRA request, however, since the Town’s October 20, 2014 extension of time letter did not reference that it was extending the time based upon “the number of requests for records pending,” we do not consider this basis. See R.I. Gen. Laws § 38-2-3(e).

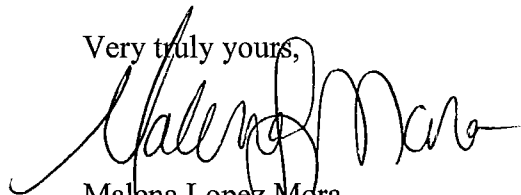
Finally, in regards to the allegation that “[t]he Town is simply using this improper and noncompliant response as a tactic to evade responding to and producing the requested documents...in an attempt to prolong the production of said documents until after the election day,” we have been presented with no evidence that the Town had any unstated election-motivated reason for the thirty business day extension.² To the contrary, a much smaller segment of documents pertaining to the property at issue were provided to a news reporter on October 30, 2014.³

Therefore, based on the totality of the circumstances, including the fact that you provided no rebuttal argument in opposition, we find that the Town did not violate the APRA when it extended the time to respond due to the voluminous nature of your request, and that the Town’s basis for the extension – “due to the scope and breadth of [the] request” – was particularized to your request.

Although the Attorney General has found no violation and will not file suit in this matter, nothing within the APRA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 38-2-8(b). Please be advised that we are closing this file as of the date of this letter.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,



Malena Lopez Mora
Special Assistant Attorney General
Ext. 2307

Cc: Mr. Edmund L. Alves, Jr., Esquire

²Mr. Richard Poirier is the owner of the property on 320 Stillwater Road, in Smithfield, Rhode Island and, at the time this complaint was filed, was “running for the political position of Vice President of the Town Council.”

³On October 30, 2014, a reporter for the Valley Breeze submitted an APRA request to the Town seeking “citations against Richard Poirer for junkyard at 320 Stillwater Road and supporting documentation.” While this evidence shows yet another APRA request that was pending, since it was not asserted by the Town it will not be considered.